

DECLARATION OF EMERGENCY**Department of Environmental Quality
Office of Environmental Assessment****Expedited Penalty Agreement—Solid Waste
(LAC 33:I.807 and VII.115 and 315) (MM004E1)**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011, which allows the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements.

This is a renewal and revision of Emergency Rule MM004, which was effective on March 20, 2007, and published in the *Louisiana Register* on April 20, 2007. Revisions include clarifications to a Solid Waste violation and changes in LAC 33:VII.115 and 315 to reflect amendments made in final rule SW037, which was promulgated on June 20, 2007.

The expedited penalty agreement rule, OS054, became final on December 20, 2006. This Emergency Rule supplements that rule by adding certain additional violations of the solid waste regulations to LAC 33:I.807, and amends LAC 33:VII.115 and 315 accordingly. The Emergency Rule will abate delays that have occurred in correcting violations of the Environmental Quality Act concerning the unauthorized transporting, disposal, and/or burning of solid wastes. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. In the recent past, complaints of unauthorized disposal and burning of solid wastes have increased considerably, especially in the hurricane-impacted areas. This Emergency Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality has approved an expedited penalty approach. It recommended a pilot program for addressing certain classes of violations with penalties in a timelier manner. The legislature approved that report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. A pilot program was created and monitored for approximately two years. Positive feedback on the program led the department to promulgate the permanent expedited penalty agreement rule that became final on December 20, 2006.

This Emergency Rule is effective on July 18, 2007, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning MM004E1 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Adopted this 29th day of June, 2007.

Mike D. McDaniel, Ph.D.
Secretary

Title 33
ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
*** [See Prior Text]			
SOLID WASTE			
Unauthorized on-site disposal of <u>regulated</u> solid waste <u>generated at the site</u> by the owner, lessee, or other person having an actual right, title, or interest in the property.	<u>LAC</u> <u>33:VII.315.C</u>	<u>\$250</u>	<u>Per</u> <u>occurrence</u>
Unauthorized disposal of solid waste by the generator at an off-site location not permitted to receive such waste.	<u>LAC</u> <u>33:VII.315.C</u>	<u>\$250</u>	<u>Per</u> <u>occurrence</u>
Operation of an unauthorized disposal site where solid waste is disposed.	<u>LAC</u> <u>33:VII.315.C</u>	<u>\$1000</u>	<u>Per</u> <u>occurrence</u>
An owner, lessee, or other person having an actual right, title, or interest in the property of an unauthorized disposal site in which solid waste is disposed.	<u>LAC</u> <u>33:VII.315.C</u>	<u>\$1000</u>	<u>Per</u> <u>occurrence</u>
Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.	<u>LAC</u> <u>33:VII.315.KF</u>	<u>\$500</u>	<u>Per</u> <u>occurrence</u>
Open burning of solid waste as prohibited by regulation.	<u>LAC</u> <u>33:VII.315.M</u>	<u>\$250</u>	<u>Per</u> <u>occurrence</u>
Offering residential solid waste to an unauthorized transporter and/or facility not permitted to receive such waste.	<u>LAC</u> <u>33:VII.315.O</u>	<u>\$250</u>	<u>Per</u> <u>occurrence</u>
Offering commercial solid waste and/or construction and demolition debris to an unauthorized transporter and/or a facility not permitted to receive such waste.	<u>LAC</u> <u>33:VII.315.O</u>	<u>\$500</u>	<u>Per</u> <u>occurrence</u>

Expedited Penalties			
Violation	Citation	Amount	Frequency
Offering industrial solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste.	<u>LAC</u> <u>33:VII.315.C</u>	<u>\$750</u>	<u>Per occurrence</u>
Transportation of solid waste to processing or disposal facilities not permitted to receive such waste.	<u>LAC</u> <u>33:VII.505.D</u>	<u>\$1,000</u>	<u>Per occurrence</u>
Waste Tires			
*** [See Prior Text]			

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended LR 33:**

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Transport—to move ~~industrial solid waste off-site and/or to move solid waste of a commercial establishment or more than one household~~ to a non-processing transfer station or collection, processing, or disposal facility.

Transporter—any person who moves ~~industrial solid waste off-site and/or who moves solid waste of a commercial establishment or more than one household to a non-processing transfer station or collection, processing, or disposal facility, excluding individuals who transport their own residential waste to a collection facility, transfer station, or permitted solid waste landfill~~.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office

of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 33:**.

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

A. - **N**.2. ...

Q. Generators shall not offer solid waste to transporters, processing facilities, or disposal facilities that have not received authorization and/or the required permits necessary to receive and/or manage the generator's solid waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 33:**.